FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Wilson. Mr. Justice Pigot, Mr. Justice O'Kinealy and Mr. Justice Macpherson.

DEB NARAIN DUTT (CLAIMANT) *v.* NARENDRA KRISHNA (DECREE-HOLDER) AND ANOTHER (JUDGMENT-DEBTOR).* 1889 *February* 9.

Bengal Tenancy Act (VIII of 1885), *s.* 170—*Decree for rent under Bengal Act VIII of* 1869—*Attachment under decree obtained under Rent Law of* 1869, *subsequently to the passing of Act VIII of* 1885—*General Clauses Consolidation Act (I of* 1868), *s.* 6.

Before the Bengal Tenancy Act of 1885 came into operation, a decree for rent was obtained under Bengal Act VIII of 1869. After the Bengal Tenancy Act of 1885 had become law, the tenancy, in respect of which the rent had become due, was attached in execution of such decree. A claim was subsequently put in to the attached property by a third person, which claim was disallowed as being forbidden by s. 170 of the Bengal Tenancy Act of 1885: *Held*, that the provisions of the Bengal Tenancy Act of 1885 were applicable to the proceedings in execution; the term "proceedings" in s. 6 of Act I of 1868 not including proceedings in execution after decree.

REFERENCE to a Full Bench made by Mr. Justice PIGOT and Mr. Justice RAMPINI; the referring order was as follows:—

This is an application made by Deb Narain Dutt, claimant and petitioner, to set aside an order of the First Munsiff of Baruipur, made on the 18th June 1887.

The order was made in execution proceedings in suit No. 871 of 1886—*Moharaja Narendro Krishna* v. *Russick Chunder Chumputti*. In that suit a decree for arrears of rent was made on the 29th April 1885 under the provisions of Bengal Act VIII of 1869. On 29th December 1886, after the Bengal Tenancy Act of 1885 came into operation, the decree-holder applied for execution, and the tenure in respect of which the decree for arrears of rent had been made, was attached. Notice to stay the sale of the tenure by depositing the decretal amount was served upon the applicant in the present case by the decree-holder: but this circumstance has, in our opinion, no bearing upon the question which arises in the case. The tenure was put up for sale, and the applicant then preferred a claim objecting to the execution proceeding,

* Full Bench on Civil Rule, No. 1118 of 1887, obtained against the order of Baboo D. N. Sarkar, Munsiff of Baruipur, dated 18th June 1887.

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which was numbered as a claim case, No. 22 of 1887, under s. 63 of Bengal Act VIII of 1869.

By the order of the 18th June 1887, which it is now sought to set aside, the Munsiff rejected the claim without enquiring into it, on the ground that, under the provisions of s. 170 of the Bengal Tenancy Act, no such claim could be preferred.

This order was made upon the authority of a decision of this Court of the 27th May 1886, in Rule No. 798 of 1886. That decision is not reported. The terms of it are as follows:—

"Execution of the decree for arrears of rent obtained by the petitioner was taken out on the 6th of January last. The proceedings, therefore, in our opinion, would be regulated by the Bengal Tenancy Act of 1885. The tenure of the debtor was attached and advertised for sale. A claim was made by a third party to have two-thirds of this tenure exempted from sale as having been purchased by him. The Munsiff found that the claimant had purchased one-third, and accordingly exempted that one-third share from sale. An objection has been raised under s. 170 of the Bengal Tenancy Act to the effect that the Munsiff acted without jurisdiction. That section provides that the sections of the Code of Civil Procedure, under which such an order could be passed, shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon. Under such circumstances we set aside the Munsiff's order as without jurisdiction. We make the rule absolute with costs."

We are unable to concur with the above decision. We are of opinion that, under s. 6 of Act I of 1868, the provisions of the Bengal Tenancy Act do not apply to this case.

The decree in the present case was made before the Bengal Tenancy Act came into force. But it appears to us that this circumstance would not affect the question whether the provisions of the Act applied, inasmuch as the suit was instituted before the Act came into operation. In our opinion, "proceedings" in the 6th section of Act I of 1868 include all proceedings from the institution of the suit to the final step taken in execution of decree.

We think it better to submit to the Full Bench a specific question as to the correctness of this reason for the opinion at which we have arrived, because as to this, the cases are not uniform, there being a decision of the High Court of Bombay which treats proceedings in execution as a new set of proceedings.

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The questions we refer to the Full Bench are:—

1. Whether, in the present case, the provisions of the Bengal Tenancy Act were applicable to proceedings in execution?

2. Whether the term "proceedings" in s. 6 of Act I of 1868 does or does not include proceedings in execution after decree?

The cases to which we would refer are the following:—

Ratanchand Shrichand v. *Hanmantrao Shivbakas* (1); *Hurro Chunder Roy Chowdhry* v. *Sooradhonee Debia* (2); *Runjit Singh* v. *Meherban Koer* (3); *Mahomed Hossein* v. *Hadji Abdulla* (4); *In re Ratansi Kalianji* (5); *Thakur Prasad* v. *Ahsan Ali* (6); *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (7); *Behary Lall* v. *Goberdhun Lall* (8); *Jugmohun Mahto* v. *Luchmeshur Singh* (9); *Becharam Dutta* v. *Abdul Wahed* (10); *Hurrosundari Dabi* v. *Bhojohari Das Manji* (11); *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (12); *Satghuri* v. *Mujidan* (13).

Baboo *Troilokyanath Mittra* for the claimant.

Under the old law a claimant had a right to have his claim investigated, it cannot have been the intention of the Legislature to deprive him of that right by the new law. The old Act was saved by s. 6 of the General Clauses Act of 1868. Proceedings in execution must be taken to be part of the suit itself, and that being so, under s. 6 of General Clauses Act, these proceedings could not be affected by the new Act. I submit the provisions of the Bengal Tenancy Act do not apply to a decree passed before that Act came into force. An application for execution is an application in the suit—*Mungul Pershad Dichit* v. *Grija Kant Lahiri* (7); and, if so, s. 170 of Bengal Tenancy Act does not apply, the same principle is enunciated in *Runjit Singh* v. *Maherban Koer* (3).

The case of *Ratanchand Shrichand* v. *Hanmantrao Shivbakas* (1) lays down that "any proceedings" includes all proceedings in any

(1) 6 Bom., H. C., A. C., 166.
(2) B. L. R., Sup. Vol., 985; 9 W. R., 402.
(3) I. L. R., 3 Calc., 663.
(4) I. L. R., 3 Calc., 727.
(5) I. L. R., 2 Bom., 148.
(6) I. L. R., 1 All., 668.
(7) I. L. R., 8 Calc., 51.
(8) I. L. R., 9 Calc., 446.
(9) I. L. R., 10 Calc., 748.
(10) I. L. R., 11 Calc., 55.
(11) I. L. R., 13 Calc., 86.
(12) I. L. R., 7 Bom., 459.
(13) I. L. R., 15 Calc., 107.

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suit from its institution to its final" disposal; and I take it execution proceedings fall within the term "final disposal." I rely on *Thakur Prasad* v. *Ahsan Ali* (1); *Mahomed Hossein* v. *Hadji Abdullah* (2); and *In re Ratansi Kalianji* (3); *Hurrosundari Debi* v. *Bhojohari Das Manji* (4); *Satghuri* v. *Mujidan* (5).

[WILSON, J.—The case of *In re Ratansi Kalanji* is not of much use to you in the present case, but you may take it that all the judges who decided it on the construction of the General Clauses Act took the same view that has been taken by this Court.]

Baboo *Rash Behari Ghose* for the opposite parties.

It is suggested by the other side that because the decree was outstanding there is a pending proceeding within the meaning of s. 6 of the General Clauses Act; and also that "proceedings" is identical with "suit." The distinction for which I contend, however, is pointed out in *Jugmohun Mahto* v. *Luchmeshur Singh* (6) where it is said that "although an application for execution is an application in the suit resulting in a decree, it may not be an application in a pending proceeding; the suit having matured into a decree it could not properly be said to be pending thereafter."

If the application had been pending thus, the old procedure could have been used, but not so if no step had been taken in execution. The definition of the word "decree" in the Civil Procedure Code show that there is a distinction between "suit" and "decree." Section 3 of the Code shows a distinction between proceedings before and after decree. Section 25 of the Code does not sanction transfer of "execution proceedings," but of "suits." Under s. 64 it has been held that execution proceedings are not proceedings in a suit.

[WILSON, J.—There is no use in citing one Act for the purpose of construing another.]

The case of *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (7) is especially in point, and upholds my contention as to pending proceedings, and *Shivram Udaram* v. *Kondiba Muktaji* (8) carries

(1) I. L. R., 1 All, 668 (671).
(2) I. L. R., 3 Calc., 727.
(3) I. L. R., 2 Bom., 148.
(4) I. L. R., 13 Calc., 86.
(5) I. L. R., 15 Calc., 107.
(6) I. L. R., 10 Calc., 748.
(7) I. L. R., 7 Bom., 459 (463).
(8) I. L. R., 8 Bom., 340.

this principle still further. See also *Rustomji Burjorji* v. *Kessowji Naik* (1), also *Chinto Joshi* v. *Krishnaji Narayan* (2); in none of these cases has execution been regarded as an integral part of a suit.

The judgment of the Full Bench (PETHERAM, C.J., WILSON, PIGOT, O'KINEALY and MACPHERSON, JJ.) was delivered by

WILSON, J.—Section 170 of the Bengal Tenancy Act VIII of 1885 enacts that "ss. 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon." This Act became law on the 1st November 1885. Among the sections of the Code thus excluded are those under which claims to property attached in execution are made. Before the Bengal Tenancy Act came into operation, a decree for rent was obtained under the Rent Act then in force (Bengal Act VIII of 1869), which Act embodied the provisions of the Code of Civil Procedure. After the Bengal Tenancy Act became law, the tenancy in respect of which the rent decreed had become due was attached in execution of the decree. The present applicant filed a claim to the property attached, but the Munsiff, in whose Court the proceedings took place, rejected the claim as being forbidden by s. 170 of the Bengal Tenancy Act. The question that we have to consider is, whether s. 170 of that Act applies to the present case, and the answer depends upon s. 6 of the General Clauses Act I of 1868, by which "the repeal of any Statute, Act, or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred, or any proceedings commenced before the repealing Act shall have come into operation."

The Courts of this country have frequently had to consider the effect of legislative change in the law upon proceedings instituted before the change was made, and the cases in which they have had to do so, fall, I think, under one or other of three classes.

The first class of cases consists of those in which the Courts have had to construe enactments which have altered the law, not by the mere repeal of earlier enactments, so as to bring the

(1) I. L. R., 8 Bom., 287 (293). (2) I. L. R., 3 Bom., 214.

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case under s. 6 of the General Clauses Act, but by new affirmative provisions, and in which the new enactments contain in themselves no special rule for their own interpretation. In such cases the Courts have applied the settled rule of construction ordinarily acted upon in the absence of any statutory rule inconsistent with it; and that rule is, that retrospective effect is not ordinarily given to an enactment so as to affect substantive rights but that provisions affecting mere procedure are applied to pending proceedings. To this class belong such cases as *Framji Bomanji* v. *Hosmasji Barjorji* (1); *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy* (2); *Uzir Ali* v. *Ramkomal Shaha* (3).

The second class of cases comprises those in which the enactment to be construed provides its own rule of construction by expressly or impliedly declaring that it is or is not to have retrospective operation, or the extent to which it is to affect pending proceedings. To this class belong *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (4), in which the Privy Council construed the Limitation Act, 1871; *Tupsee Singh* v. *Ram Sarun Koeri* (5), in which a Full Bench of this Court placed a construction upon s. 21 of the Bengal Tenancy Act; and several cases which will be considered later, in which the Courts have construed s. 3 coupled with other sections of the Civil Procedure Code.

The third class of cases consists of those in which the law is changed by a mere repeal of a previously existing law, and the repealing enactment contains no special rule for its own interpretation. Such cases are governed by s. 6 of the General Clauses Act.

The case now before us belongs to the third class, and, for the purpose of deciding it, we have to construe the words in s. 6, which say that the repeal of a Statute "shall not affect any proceedings commenced" before the repeal takes effect.

The word "proceedings" is a very general one, it is not limited to proceedings connected with civil suits; but includes,

(1) 3 Bom., H. C., O.C., 49.
(2) I. L. R., 14 Calc., 636.
(3) I. L. R., 16 Calc., 383.
(4) I. L. R., 8 Calc., 51.
(5) I. L. R., 15 Calc., 376.

I suppose, proceedings other than civil proceedings, and civil proceedings other than suits. When applied to suits, it may be used to mean the suit as a whole, or it may be used, and often is used, to express the separate steps taken in the course of a suit the aggregate of which makes up the suit.

I propose first to consider the decisions affecting the question before us, and, in doing so, I shall have to notice some which did not depend upon the construction of the General Clauses Act, but which have a more or less close bearing upon the question before us.

In *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1) the question was whether an application for execution was governed, in respect of limitation, by the Limitation Act of 1859, or that of 1871, and the Privy Council held that an application for execution is an application in the suit, and that, therefore, a provision in the later Act excepting from its operation "suits" commenced before a certain date, applied to proceedings in execution in such suits.

The remaining cases which have to be considered may be conveniently divided into three groups. The first consists of cases relating to appeals under various acts, and were all decided simply upon the construction of the General Clauses Act. Of these cases the earliest in date is *Ratanchand Srichand* v. *Hanmantrao Shivbakas* (2) before Couch, C.J., and three other Judges of the Bombay Court. It was held by them that the repeal of an Act, under which an appeal lay against a decree, did not bar the appeal in a case in which the decree was passed before, but the appeal presented after the repealing Act. The ground of the decision is thus stated at page 169: "a suit is a judicial proceeding, and the word 'proceeding' must be taken to include all the proceedings in the suit from the date of its institution to its final disposal, and, therefore, to include proceedings in appeal."

The case of *Thakur Prasad* v. *Ahsan Ali* (3) before the Full Bench of the Allahabad High Court only bears upon the question before us, in that it is an authority for the proposition that,

(1) I. L. R., 8 Calc., 51. (2) 6 Bom., H. C., A C., 166.
(3) I. L. R., All., 668.

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under s. 6 of the General Clauses Act, an appeal is a part of the same proceedings as the thing appealed against.

In *Syed Mahomed Hossein* v. *Hadji Abdullah* (1), a case decided on the Registration Acts, 1871 and 1877, it was held that the repeal of an Act which forbade an appeal did not give an appeal against an order made before the repeal.

Similarly in *Hurrosundari Dabi* v. *Bhojohari Das Manji* (2) it was held that "proceedings" in s. 6 of the General Clauses Act include an appeal against a decree, and that ,therefore, the repeal of a section forbidding an appeal did not give an appeal against a decree in a suit brought before the repealing Act came into operation, and the same thing was held in *Satghuri* v. *Mujidan* (3).

The second group of cases relate to execution, and most of them were decided on the construction of the General Clauses Act.

In the case of *Shumbhochunder Holder* (4), the decision turned upon the construction of s. 12 of the High Court's Act, 24 and 25 Vict., Cap. 104. That section runs: "From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings, and all previous proceedings in the said last mentioned Courts, shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued as nearly as circumstances permit under and according to the practice of the abolished Courts respectively." This provision so far as it keeps alive the practice of the abolished Courts in pending cases, is exactly analogous in character to the enactment that we have to construe, and the expression "pending proceedings" cannot, I think, be distinguished in meaning from "proceedings commenced."

The matter came before the Court, consisting of Peacock, C.J., and Morgan and Phear, JJ., in this way: Three persons had been arrested in execution under writs issued from the

(1) I. L. R., 3 Calc., 727.
(2) I. L. R., 13 Calc., 86.
(3) I. L. R., 15 Calc., 107.
(4) Bourke, O.C., 59.

High Court similar in form to the writs of *Ca. Sa.* in use in the Supreme Court, and they were brought up by *habeas corpus* and claimed to be discharged on the ground that their detention was illegal. It turned out according to the view that ultimately prevailed that the legality or illegality of the custody of each man depended upon whether the procedure in force in the Supreme Court or that of the High Court was to be followed. It is only necessary to notice the case of one of the prisoners—Shumbhoochunder Holder. With regard to him, all the Judges agreed, though not without some doubt on the part of Phear, J., that his case was governed by the old law, on the ground that the decree against him had been obtained and execution proceedings instituted against him in the Supreme Court before its abolition, and that the proceedings then before the Court were under the circumstances a continuation of those earlier execution proceedings. A series of cases have arisen upon the Limitation Act, 1877. In *Behary Lall* v. *Goberdhun Lall* (1), Mitter and Norris, JJ., dealing with the effect of that Act upon the execution of decrees passed before it came into operation, held that, by reason of s. 6 of the General Clauses Act, the provisions of the previous law remained unaffected. In *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (2) the plaintiff obtained a decree before the Limitation Act of 1877 was passed. After the passing of that Act, he made an application, which, under the former law, would have had the effect of keeping the decree in force for the purpose of execution, but which, under the latter Act, had not that effect. It was held that a subsequent application for execution was barred. West, J., in delivering judgment, said: "In the case quoted—*Behary Lall* v. *Goberdhun Lall*—'proceedings' are identified with suit; but we think that where a decree has been obtained, the application for execution initiates a new set of proceedings—see *Andrews* v. *Marris* (3)—and that, therefore, the rule of the General Clauses Act (I of 1868) is not to be held to govern all the remotest ministerial consequences of a suit arising on applications made years afterwards according to the

(1) I. L. R., 9 Calc., 446. (2) I. L. R., 7 Bom., 459.
(3) 1, Q. B., 3.

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procedure in force at its institution, but only to bring under the same law such series of proceedings as group themselves naturally together, as *e.g.*, those on a particular application for execution." The same question again came before Mitter and Norris, JJ., in *Jugmohun Mahto* v. *Luchmeshur Singh* (1), and the learned Judges differed from their previous opinion. Mitter, J., said: "As to 'proceedings' being identical with 'suit,' it seems to me that we held that proposition to be correct on the authority of the Privy Council decision in *Mungul Pershad Dichit's* case; and after hearing arguments in this case, and after considering the judgment quoted, I still adhere to that opinion, *viz.*, that an application for execution of a decree is an application in the suit which resulted in the decree. That was distinctly held in *Mungul Pershad Dichit's* case, and we are bound by that decision. But at the same time it seems to me that, although it is an application in that suit, it may not be an application in a pending proceeding. The suit having matured into a decree could not properly be said to be pending thereafter. A proceeding to be a pending proceeding after a decree must be initiated by an application for execution. But after a suit terminates in a decree, if nothing further is done, it cannot be said to be a pending proceeding. It is on that ground that I think we were not right in the decision in *Behary Lall* v. *Goberdhun Lall* (2)." A similar view was taken by Prinsep and Macpherson, JJ., in *Becharam Dutta* v. *Abdul Wahed* (3).

In a case cited in the order of reference, it was held that s. 170 of the Bengal Tenancy Act applies so as to exclude a claim in an execution after the Act came into operation, though I presume the decree was before that date.

In *Shivram Udram* v. *Kondiba Muktaji* (4), West and Haridas, JJ., held, if the case is to be regarded as a decision on the General Clauses Act, that where property has been attached in execution, an application by the attaching creditor for sale of the property is a new proceeding. Perhaps, however, this case ought rather to be regarded as having been decided on the other grounds pointed out in the judgment.

(1) I. L. R., 10 Calc., 748.
(2) I. L. R., 9 Calc., 446.
(3) I. L. R., 11 Calc., 55.
(4) I. L. R., 8 Bom., 340.

The third group consists of cases decided with respect to the Civil Procedure Code, and almost all of them were expressly decided, not upon the General Clauses Act, but upon that Act together with and modified by the special rules of construction laid down in the Civil Procedure Code. The first of these is *In re Ratansi Kalianji* (1) before Westropp, C.J., and four other Judges. The point decided was that a judgment-debtor imprisioned in execution under the Civil Procedure Code of 1859, and who had been in prison for six months, was not entitled to be released on the passing of the Code of 1877, which reduced the period of imprisonment for debt to six months. The decision turns upon the construction of the Procedure Code itself, which contained rules of construction different from those of the General Clauses Act, and I do not find that any of the learned Judges expressed an opinion as to what the effect of the General Clauses Act upon the case would have been if the special rules of the Procedure Code had not been present to control it, except Green, J., who cites *Ratanchand Shrichand* v. *Hanmantrao Shivbakas* (2) and is disposed to regard proceedings as applying to suits "including execution and appeal."

In *Chinto Joshi* v. *Krisnaji Narayan* (3) an application made after the repeal of the Procedure Code of 1859 to set aside a sale made in execution proceedings commenced under that Act was held to be governed by the repealed Act. The question whether execution is a part of the same proceedings as the suit within the meaning of s. 6 of the General Clauses Act, did not arise; and if I rightly follow the judgment of West, J., he intentionally guarded himself against expressing an opinion upon any question of so general a character; but he suggested a test when he said that the proceeding before the Court was "so intimately connected with the proceedings in execution that it ought properly to be regarded as a part of those proceedings." In suggesting that test, I think it is only reasonable to suppose that the learned Judge had in view, not merely the General Clauses Act, but the General Clauses Act modified by s. 3 and other sections of the Procedure Code, in the manner which had been explained in *In re Ratansi Kalianji* (1).

(1) I. L. R., 2 Bom., 148. (2) 6 Bom., H. C. A. C., 166.

(3) I. L. R., 3 Bom., 214.

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In *Runjit Singh* v. *Meherban Koer* (1) the question for consideration related to cases in which, under the Procedure Code of 1859, an appeal to this Court was allowed, but in which the Act of 1877, if applicable, did not allow them, and in which the suits were instituted before the change in the law, but the appeals were presented after it. The Judges were unanimous in holding that the appeals lay. Garth, C.J., accepted to the full the ruling of the Bombay Court in *Ratanchand Srichand* v. *Hanmantrao Shivbakas* (2) that the word "proceedings" in s. 6 of the General Clauses Act includes the whole of a suit; and expressed the opinion that there was nothing in the Code itself to exclude that view. I think Jackson, J.'s view is the same. The other learned Judges—Markby, Mitter and Ainslie—decided the case on other grounds and guarded against expressing an opinion on this point.

In *Rustomji Burjorji* v. *Virbhadrapa Irsangapa* (3), a case depending, not upon the General Clauses Act, but upon s. 3 and other sections of the Civil Procedure Code, Sargent, C.J., and Haridas, J., accepted the test suggested by West, J., in *Chinto Joshi* v. *Krishnaji Narayan* already cited, for determining the identity of proceedings.

As to the first of the groups of cases just treated of, those relating to appeals, there is, I think, a completely uniform course of decision to the effect that an appeal is a part of the same proceedings within the meaning of s. 6 of the General Clauses Act, as the thing appealed against, and that therefore if the thing appealed against is a decree in a suit, the appeal is a part of the same proceeding as the earlier steps in the suit. These decisions are, I think, too numerous, passed by too many Courts, and spread over too long a time for us to be justified in questioning them. And I do not see how they can be logically supported upon any ground narrower than that assigned in the first case in the series, namely, that "proceedings" in s. 6 of the General Clauses Act, when applied to a suit, means the whole suit; and it would seem to follow that the proceedings, in the sense of the suit, must include execution, which is undoubtedly a step in the suit.

(1) I. L. R., 3 Calc., 663. (2) 6 Bom., H. C., A. C., 166.
(3) I. L. R., 8 Bom., 287.

On the other hand, it is always dangerous in matters like that before us to reason too confidently from general propositions. There can be no doubt that a thing may be a step in the suit, and may yet well be regarded as a proceeding separate from the other steps in the suit. And in enquiring whether execution should be so regarded, we may, I think, be justified in looking outside the General Clauses Act. It is not an Act regulating procedure; that is the object of another class of Acts. In this Act, therefore, we may well understand "proceedings" in the sense of proceedings as defined and regulated by the law for the time being in force governing procedure with regard to any given subject-matter. As to suits under the Bengal Tenancy Act, the Civil Procedure Code generally applies; and the Civil Procedure Code has to some extent divided the whole proceedings in a suit into separate proceedings. There is nothing in itself unreasonable in holding that execution is such a separate proceeding, and there is this distinction between appeals and executions; that an appeal is of necessity a proceeding between the same parties as the matter appealed against; whereas, proceedings arising in execution may be, and in the case before us are, between one of those parties and a stranger to the suit.

The second group of cases, those relating to execution, are all to the effect that execution is to be regarded as a separate proceeding from the previous steps in the suit. With regard to the cases in Bombay and in this Court, upon the Limitation Act as affecting execution proceedings, *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa* (1), and *Jugmohun Mahto* v. *Luchmeshur Singh* (2), I have no doubt (if I may say so with due deference) that upon any view of the present question they were rightly decided on the ground that the General Clauses Act, s. 6, did not apply. If the true view be that the word "proceedings" in that section does not embrace the whole suit so as to include execution, then it is clear that the result was right. If the other view of the meaning of "proceedings" should prevail, I still think that s. 6 would not apply to the cases in question, because I think the operation of the section ought to be limited to the cases in which a change in the law is strictly the result of the

(1) I. L. R. 7 Bom., 489. (2) I. L. R., 10 Calc., 748.

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repeal of an enactment, not of substantive enactment in the new legislation. And I should be disposed to say that the rules of law to which effect was given in the cases of which I am speaking, became such, not by the repeal of the old law, but by the substantive enactments of the new. The fact, however, remains that the first of these grounds and not the second was the one actually taken by the learned Judges who decided the cases: and they are, therefore, authorities for the narrower construction of the word " proceedings," and for holding that an application for execution initiates proceedings separate from those which resulted in the decree. The rule upon which *In re Shumbhoo Chunder Holder* (1 was decided lends strong confirmation to this view.

Of the last group of cases, those decided upon the Civil Procedure Code, all but one were distinctly based upon the terms of the Code itself, not merely upon the General Clauses Act. The one exception is *Runjit Singh* v. *Meherban Koer* (2), in which Garth, C.J., considered that there was nothing in the then Code of Civil Procedure to modify the effect of the General Clauses Act. The word upon which he based that view has been changed in the subsequent Acts. But the opinion of Garth, C.J., remains that the word " proceedings " applies to a suit in its entirety. There is the opinion of Green, J., in *In re Ratansi Kalianji* (3) to the same effect. On the other hand, there is the view stated by West, J., in the cases cited with some support from Sargent, C.J., in *Rustomji Burjorji* v. *Kessowji Naik* (4).

Upon a consideration of the authorities, the result, in my opinion, is that whether the two currents of decision, that relating to appeals and that relating to execution, can or cannot be explained upon grounds logically satisfactory, we must accept them; and I should, therefore, answer the question referred to us,—the first in the affirmative, the second in the negative. The rule will be discharged with costs.

T. A. P. *Rule discharged.*

(1) Bourke O.C., 59.
(2) I. L. R., 3 Calc., 663.
(3) I. L R., 2 Bom., 148.
(4) I. L. R., 8 Bom., 287.